



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2022-0113; FRL-9656-02-R1]

#### **Air Plan Approval; State Implementation Plan Revisions Required by the 2008 and 2015 Ozone Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut for purposes of implementing the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). The SIP revisions consist of a demonstration that Connecticut meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA, or the Act) with respect to the 2008 and 2015 ozone standards. We are also approving a Consent Order that establishes NO<sub>x</sub> RACT requirements for four facilities in the state. Additionally, we are approving Connecticut's certification that it meets the nonattainment new source review (NNSR) requirements of the CAA for purposes of the 2008 and 2015 ozone standards. This action is being taken in accordance with the Clean Air Act.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2022-0113. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at

<https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Air Quality Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code 05-2), Boston, MA 02109-3912, telephone number (617) 918-1046, email [mcconnell.robert@epa.gov](mailto:mcconnell.robert@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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#### **I. Background and Purpose**

On March 25, 2022, (87 FR 17052), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of a demonstration that Connecticut meets the requirements of RACT for NO<sub>x</sub> and VOCs set forth by the CAA with respect to the 2008 and 2015 ozone standards, and Consent Order # 8377 that establishes NO<sub>x</sub> RACT requirements for Middletown Power LLC, Montville Power LLC, Connecticut Jet Power LLC, and Devon Power LLC. We note that our March 25, 2022, proposal indicated that these four facilities were owned and operated by NRG Connecticut. However, the Connecticut Department of Energy and Environmental Protection (CT DEEP) provided us with an

administrative update to this order to reflect that a new owner, Generation Bridge Acquisition LLC, purchased the assets that are the subject of the order effective as of November 1, 2021. Therefore, on May 5, 2022, CT DEEP submitted an updated order, Consent Order # 8377, Modification 1, and we are approving that updated order into the state's SIP. Our March 25, 2022 proposal also proposed to approve negative declarations for a number of source categories for which EPA has established Control Technique Guidelines (CTGs). We note that Connecticut's December 21, 2020, submittal included a negative declaration for EPA's 2016 Oil and Gas CTG, which we approved separately on March 30, 2022 (see 87 FR 18274). Additionally, our NPRM proposed approval of a certification that Connecticut meets the NNSR requirements of the Act for purposes of the 2008 and 2015 ozone standards. The formal SIP revisions were submitted by Connecticut on December 21, 2020. The specific requirements of these SIP revisions and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

## **II. Final Action**

EPA is approving Connecticut's certification that it meets the requirements of RACT for NO<sub>x</sub> and VOCs set forth by the CAA with respect to the 2008 and 2015 ozone standards, Consent Order # 8377, Modification 1, that establishes NO<sub>x</sub> RACT requirements for Middleton Power LLC, Montville Power LLC, Connecticut Jet Power LLC, and Devon Power LLC, and a certification that Connecticut meets the NNSR requirements of the Act for purposes of the 2008 and 2015 ozone standards, as revisions to the Connecticut SIP.

## **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of State of Connecticut, Department of Energy and Environmental Protection, Consent Order # 8377, Modification 1, issued to Middletown Power LLC, Montville Power LLC, Connecticut Jet Power LLC, and Devon Power LLC, May 3, 2022. The order establishes NO<sub>x</sub>

RACT requirements for these facilities for purposes of complying with Phase 2 of the Regulations of Connecticut State Agencies 22a-174-22e, Control of nitrogen oxide emissions from fuel burning equipment at major stationary sources of nitrogen oxides. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days**

**after date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 18, 2022.

David Cash,  
Regional Administrator,  
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart H - Connecticut**

2. Section 52.370 is amended by adding paragraph (c)(128) to read as follows:

#### **§ 52.370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(128) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 20, 2021 and amended on May 3, 2022.

(i) *Incorporation by reference.* (A) State of Connecticut, Department of Energy and Environmental Protection, Consent Order # 8377, Modification 1, issued to Middletown Power LLC, Montville Power LLC, Connecticut Jet Power LLC, and Devon Power LLC, May 3, 2022.

(B) [Reserved]

(ii) [Reserved]

3. Section 52.375 is amended by adding paragraph (i) to read as follows:

#### **§ 52.375 Certification of no sources.**

\* \* \* \* \*

(i) In its December 21, 2020, submittal to EPA pertaining to reasonably available control technology requirements as a serious area for the 2008 ozone standard and for the 2015 ozone standard as a state containing a moderate nonattainment area and a marginal nonattainment area

that is part of the Ozone Transport Region, the State of Connecticut certified to the satisfaction of EPA that no sources located in the State are covered by the following Control Technique Guidelines:

- (1) Automobile and Light-Duty Truck Assembly Coatings.
- (2) Control of VOC Emissions from Large Petroleum Dry Cleaners.
- (3) Fiberglass Boat Manufacturing Materials.
- (4) Control of VOC Equipment Leaks from Natural Gas/Gasoline Processing Plants.
- (5) Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
- (6) Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.
- (7) Flatwood Paneling Coatings.
- (8) The Oil and Natural Gas Industry.

4. Section 52.377 is amended by adding paragraphs (u) and (v) to read as follows:

**§ 52.377 Control strategy: Ozone.**

\* \* \* \* \*

(u) *Approval*—Revisions to the Connecticut State Implementation Plan (SIP) submitted on December 21, 2020. The SIP revisions satisfy the requirement to implement reasonably available control technology (RACT) for sources of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) as a serious nonattainment area for purposes of the 2008 ozone standard, and also approves RACT for Connecticut for the 2015 ozone standard as a state containing a moderate nonattainment area and a marginal area that is located within the Ozone Transport Region.

(v) *Approval*—Submittal from the Connecticut Department of Energy and Environmental Protection dated December 21, 2020, to address the nonattainment new source review (NNSR) requirements as a serious nonattainment area for the 2008 8-hour ozone standard for the Greater



Connecticut and the New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment areas, and also approves NNSR for Connecticut for the 2015 ozone standard as a state containing a moderate and a marginal nonattainment area and being located within the Ozone Transport Region as it meets the requirements for both the state's marginal and moderate classifications.

[FR Doc. 2022-13539 Filed: 6/27/2022 8:45 am; Publication Date: 6/28/2022]